

## BEFORE THE

**WISCONSIN DEPARTMENT OF NATURAL RESOURCES**

In the Matter of Whether Broad )  
 Authorization may be provided )  
 Under 29.604 (6r), Stats., )  
 to Incidentally Take an Animal Species )  
 that is Listed as Threatened. )

The Wisconsin Department of Natural Resources (Department) listed the Butler's gartersnake (*Thamnophis butleri*) as a state-Threatened species in 1997 due to extensive habitat loss within its very limited range and the integradation with a similar species, the eastern plains gartersnake (*Thamnophis radix*). Since that time, the Department has increased its understanding of the habitat requirements of the snake and the continued loss of suitable snake habitat. At the same time, conflicts between land development and snake conservation continue due to the coincidence of the snake's limited range with the rapidly developing metropolitan Milwaukee area. Twenty-three projects have been authorized for incidental take of the Butler's gartersnake between 1997 and September 2004. No other Threatened or Endangered species has had more than one authorization.

Authorization to incidentally take the state-Threatened Butler's gartersnake (*Thamnophis butleri*) described herein during and as a result of projects that impact lands providing only minimal conservation value to the status and recovery of the snake is granted as provided herein.

## FINDINGS OF FACT

1. The rarity of the Butler's gartersnake and the continued development pressure within its range necessitates a streamlined process for reviewing and planning projects that have limited impact to the species. The Department, in conjunction with a variety of stakeholders, developed a Butler's Gartersnake Conservation Plan that focussed protection at sites with highest conservation value while reducing or eliminating restrictions on sites with moderate to minimal conservation value.
2. The Department entered into formal State Agency Consultation under s. 29.604, Stats., in 2004 to develop broad incidental take authorization for the Butler's gartersnake for projects that do not inhibit or compromise the long-term conservation and recovery of the species or for projects that only temporarily impact suitable habitat. The Department developed a draft Incidental Take Authorization dated February 18, 2004 and updated the draft on April 27, 2004. The authorization for projects that may result in temporary habitat disturbance was authorized on August 3, 2004. This current authorization covers projects that impact lands that provide only minimal conservation value to the status and recovery of the snake.

The following definitions apply to the authorization described herein:

- a. "Suitable habitat" and "suitable habitat patch" mean undeveloped areas that include both wetland and adjacent upland habitat suitable to the Butler's gartersnake. Patch

size is determined by non-isolated suitable habitat and not limited to a specific project site. Suitable Butler's gartersnake habitat includes:

- (1) wetland habitat of any classification except permanent open water. Lakes, streams, and deep ponds are not considered suitable, nor are permanent stormwater management ponds. A 100-foot edge of forested wetland where it abuts or is adjacent to suitable upland habitat is also considered suitable.
- (2) upland habitat within 300 or more feet of over-wintering wetlands, with intact ground vegetation (grasses, forbs), and less than 75% canopy closure. Upland habitat must be directly connected to suitable wetland in at least one location.

Note: For instance, habitat not considered suitable includes closed canopy forests where ground vegetation is very sparse, lawns, and fields in active agriculture; but fields previously devoted to agriculture or other uses with significant invasion of woody shrubs and trees are suitable if grasses and forbs are largely intact. Lawns and fields in active agriculture row crops or in crop rotation are not considered suitable. Fields that remain fallow for more than one year may be considered suitable habitat. Pastures will be included as suitable habitat if more than 50 percent of the acreage has an eight-inch or greater canopy height.

- b. "Good quality suitable habitat" means habitat with less than 50% of the wetland component dominated by dense cattail (*Typha* sp.) beds or dense stands of exotic species (i.e. reed canary grass (*Phalaris arundinacea*); purple loosestrife (*Lythrum salicaria*); giant reed grass (*Phragmites* sp.)) and/or less than 50% of the ground cover (grasses and forbs) in the upland habitat component is relatively sparse and likely to become sparser through ongoing natural succession.
- c. "Moderate quality suitable habitat" means habitat with more than 50% and less than 75% of the wetland component dominated by dense cattail (*Typha* sp.) beds or dense stands of exotic species (i.e. reed canary grass (*Phalaris arundinacea*); purple loosestrife (*Lythrum salicaria*); giant reed grass (*Phragmites* sp.)) and/or more than 50% and less than 75% of the ground cover (grasses and forbs) in the upland habitat component is relatively sparse and likely to become sparser through ongoing natural succession.
- d. "Poor quality suitable habitat" means habitat with more than 75% of the wetland component dominated by cattail (*Typha* sp.) beds or dense stands of exotic species (i.e. reed canary grass (*Phalaris arundinacea*); purple loosestrife (*Lythrum salicaria*); giant reed grass (*Phragmites* sp.)); and/or more than 75% of the ground cover (grasses and forbs) in the upland habitat component is relatively sparse and likely to become sparser through ongoing natural succession.
- e. "Isolation" means a site that does not exchange genetic material with other sites because of physical separation from other suitable habitat patches. Barriers include physical structures such as paved roads, parking lots and walls that are impassable to the snakes; or resistant terrain, such as mowed lawns, golf courses, forests or agricultural fields that a snake could physically pass through, but would do so only occasionally with risk of predation, desiccation, and lack of shelter from the elements. Resistant terrain is considered impassable if it extends over 1,000 feet from suitable

habitat.

- f. "Tier 1 – minimal conservation value site" means a site where the Butler's gartersnake occurs and includes suitable habitat that is less than 10 acres in size, regardless of habitat quality, or less than 20 acres with poor habitat quality.
3. All projects that propose activities that will impact the Butler's gartersnake on Tier 1 sites and meet the following criteria are covered under this broad Authorization for incidental take.

The acreage calculation for suitable habitat (defined above) includes the total, contiguous, suitable habitat available for the snake, regardless of project boundaries. In most cases the suitable habitat calculation will include habitat beyond the project boundary.

4. The Department, with advice from the Butler's Conservation Team, has determined that sites with minimal long-term conservation value (Tier 1), as defined, do not warrant the same protection as sites with moderate or significant long-term conservation value. Sites classified as Tier 1 - Minimal Conservation Value are regarded as not contributing to the overall conservation of the species because the habitat they contain is either isolated from other patches, too small to support a population long-term, or of poor quality. Incidental take that occurs under this authorization is not expected to have a negative effect on the overall status and recovery of the species. As such, no conservation measures are required for projects covered under this authorization. Voluntary actions that would protect and/or enhance the snake are available and should be used at the discretion of the project applicant.
5. Any applicant requesting incidental take authorization per the conditions herein are required to provide the necessary information to demonstrate they meet the conditions. The Department will issue a letter as appropriate providing coverage under the authorization.
6. The Department will apply the principles of adaptive management to this Consultation project. As the collective knowledge base of the Butler's gartersnake evolves, the conditions of this authorization will be reviewed and modified accordingly.
7. The taking authorization shall apply only to activities that do not inhibit or compromise the long-term conservation and recovery of the species. The Department reserves the right to deny any authorization or require individual incidental take authorization as warranted.
8. Incidental take of the Butler's gartersnake (*Thamnophis butleri*) as a result of activities meeting the conditions described herein is not likely to jeopardize the snake's continued existence and recovery, or the whole plant-animal community of which it is a part within the state; and the activity is not likely to result in the destruction or adverse modification of habitat that is critical to the continued existence of the species within the state, if the Conservation Measures referenced above are implemented.
9. The Department has complied with s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code.
10. The Department issued a public notice dated February 25<sup>th</sup>, 2004 and closing on March

26<sup>th</sup>, 2004 that described the proposed incidental take. DNR provided the public notice to the news media throughout the state, to the parties listed in NR 27, and to other parties who have requested in writing to receive incidental taking notices. In addition, the Department held a public informational hearing on the proposed authorization on March 16<sup>th</sup>, 2004 in Waukesha. Written and verbal public comments were submitted to the Department.

The following changes were made to the proposed authorization as a result of public comment and the continued development of the overall Butler's gartersnake Conservation Strategy:

- Management Guidelines were added to minimize take that may result from habitat modifications.
- Suitable habitat patch sizes covered under the authorization were increased.
- Clarifications of lands not considered as suitable habitat (specifically agricultural lands).

11. The Department has concluded that the proposed activities covered under this broad incidental taking authorization will provide benefits to the public health, safety and welfare.

### **CONCLUSIONS OF LAW**

1. The Department has the authority pursuant to s. 29.604 (6r), Stats., to authorize the incidental take of state Endangered or Threatened species.
2. The Department has complied with appropriate statutes and administrative rules in making this decision.

### **ORDER**

Persons and their employees, agents and contractors, are authorized to incidentally take the Butler's gartersnake (*Thamnophis butleri*) provided that the conditions identified above are met.

## APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin statutes, administrative rules and case law establish time periods within which requests to review Department decisions must be filed.

For judicial review of a decision pursuant to sections 227.52 and 227.53, Stats., you must file a petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

This 6<sup>TH</sup> day of October, 2004

State of Wisconsin  
Department of Natural Resources  
For the Secretary

By: Signe L. Holtz for Laurie Osterdorf

Administrator  
Division of Land  
Wisconsin Department of Natural Resources

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